

**AREA BOARD OF ZONING APPEALS OF TIPPECANOE COUNTY  
MINUTES OF A PUBLIC HEARING**

DATE.....April 28, 2004  
TIME.....7:00 P.M.  
PLACE.....CO. OFFICE BLDG.  
20 N. 3<sup>RD</sup> STREET  
LAFAYETTE IN 47901

**MEMBERS PRESENT**

Mark Hermodson  
Gary Schroeder  
Edward Butz  
Steve Clevenger  
Ralph Webb  
Edward Weast

**MEMBERS ABSENT**

Jean Hall

**STAFF PRESENT**

Sallie Fahey  
Krista Trout  
Jay Seeger, Atty.  
Michelle D'Andrea

The Area Board of Zoning Appeals of Tippecanoe County public hearing was held on the 28<sup>th</sup> day of April 2004, at 7:00 P.M., pursuant to notice given and agenda posted as provided by law.

Mark Hermodson called the meeting to order.

**I. APPROVAL OF MINUTES**

Ralph Webb moved to approve the minutes of March 24, 2004 public hearing. Edward Butz seconded and the motion carried by voice vote.

**II. NEW BUSINESS**

Sallie Fahey informed the Board that **BZA-1660 RAYMOND E. BRADLEY** had to be continued to the June 23, 2004 meeting due to unforeseen illnesses and has been agreed upon by both sides. She stated that **BZA-1661-HARRISON HIGHLANDS, LLC** requested to be continued to the September 22, 2004 meeting because the site plan was not ready and **BZA-1665-ROD EVANS** had to be continued to the May 26, 2004 meeting due to lack of sign posting. .

**III. PUBLIC HEARING**

Ralph Webb moved that there be incorporated into the public hearing portion of each application to be heard this evening and to become part of the evidence at such hearing, the Unified Zoning Ordinance, the Unified Subdivision Ordinance, the Comprehensive Plan, the By-laws of the Area Board of Zoning Appeals, the application and all documents filed therewith, the staff report and recommendation on the applications to be heard this evening and responses from the checkpoint agencies. Edward Butz seconded and the motion carried by voice vote.

Ralph Webb moved to continue **BZA-1660 RAYMOND E. BRADLEY** to the June 23, 2004 meeting with a deadline for the findings of fact to the APC office on June 19, 2004; **BZA-1665-ROD EVANS** to the May 26, 2004 meeting and **BZA-1661 HARRISON HIGHLAND I, LLC** to the September 22, 2004 meeting. Edward Butz seconded and the motion carried by voice vote.

1. **BZA-1655—DANIEL A. TEDER:** Petitioner is requesting a side setback of 17.5' instead of the required 20' (in the OR zone) for an already begun addition to the Pets & Vets building located at 1220 Montgomery Street, West Lafayette, Wabash 12(NE)23-5. (UZO 4-2-2) CONTINUED FROM THE JANUARY MEETING BECAUSE IT WAS FILED BEFORE A RELATED ORDINANCE AMENDMENT WAS APPROVED.

Ralph Webb moved to hear and vote on the above-described request. Edward Butz seconded the motion.

Sallie Fahey presented slides of the zoning map, aerial photo, site plan and 7 photos. She mentioned that this lot may or may not have covenants, but that would be a private matter. She read the staff report with recommendation of denial.

Daniel Teder, PO Box 280, Lafayette, IN, stated that he represented the petitioners Michel and Lucie Levy.

Mark Hermodson stated that he was unaware the Levy's were involved and he has a conflict of interest.

*Mark Hermodson left the room.*

Jay Seeger stated that since Vice President, Jean Hall was not present; the Board must entertain a motion for appointment of a President Pro Tempore.

Edward Weast moved to appoint Ralph Webb as President Pro Tempore. Gary Schroeder seconded and the motion carried by voice vote.

Daniel Teder pointed out that the petition does list the Levys as the owners, but they were out of town, so the case ended up under his name. He stated that when the petition was filed the staff contacted him to let him know that this use was not allowed in this zone, but that it would be addressed through a UZO amendment. He stated that the staff did an excellent job in taking the initiative to solve the problem and was very helpful. He explained that the problem with this building occurred after the shell was built. He stated that the contractor determined that the survey was not correct. He said that as soon as that mistake was determined they contacted the West Lafayette City Engineer and was advised not to continue building in the variance area. He stated that the third room is 7.5' wide instead of 10' and it is useable but not very practical. He said that it is an unnecessary hardship to change this at this point. He informed the Board that he has spoken to all of the adjoining property owners and there are no objections to this request. He stated that this would not affect the value or use of the other lot. He asked for approval.

Steve Clevenger asked how far into construction the variance portion was.

Daniel Teder stated that part of the walls and roof were completed. He said that they stopped construction on the cement, so that has not been poured in the variance section. He explained that they would have to move the wall and roof back if the variance is not approved. He said that the 2.5' feet is needed because the space is so small. He pointed out that this would be a state-of-the-art facility. He mentioned that they would be meeting the ordinance with 5 parking spaces per doctor.

Steve Clevenger asked when the survey was done.

Daniel Teder stated that the survey was done when the property was first developed. He reiterated that as soon as the mistake was detected, they contacted the proper authorities.

The Board voted by ballot 5 to grant – 0 to deny thus approving **BZA-1655—DANIEL A. TEDER.**

*Mark Hermodson returned to the room.*

2. **BZA-1662—MADAM NEW YORK, LLC:** Petitioner is seeking a variance to allow a 30' setback instead of the required 40' from the right-of-way of Soldiers Home Road to construct a new dwelling on property located at 3118 Soldiers Home Road, Wabash 5(SE)23-4. (UZO 4-2-2)

Ralph Webb moved to hear and vote on the above-described request. Edward Butz seconded the motion.

Sallie Fahey presented slides of the zoning map, 2 aerials, site plan and 3 photos. She read the staff report with recommendation of denial. She read the following letters into the record:

Richard S. Walbaum, 3015 Soldiers Home Road, West Lafayette, IN, in opposition.

Paul and Mary Fitzgerald, 3011 Soldiers Home Road, West Lafayette, IN, in opposition

Barry Ruben, 1058 Sagamore Parkway, West Lafayette, IN, clarified that the petition refers to this lot as adjacent to 3008 and 3118, Soldiers Home Road, not as 3118 Soldiers Home Road. He presented a display board and pointed out that the curve in the road shortens the lots. He said that they are proposing

a ranch style house, with 1,380 square feet of living space and a 400 square foot garage. He mentioned that this would be a moderate size home by today's standard and consistent with the other homes in the area. He pointed out that this would bring another property into the West Lafayette School system. He stated that they designed a turn-around so that the residents would not be backing into Soldiers Home Road. He mentioned that this was an old platted lot and the metes and bounds survey actually went to the middle of the road and therefore some of the square footage of the lot is the road. He respectfully disagreed with the staff's view on the infringement of the setback. He pointed out that the property to the north had a 12' encroachment and the property to the south has a 13' encroachment. He stated that if the road is widened in the future, there are already right-of-way issues on both adjoining properties. He said that they did compare this to an R1U district, where setback averaging was permitted because this was an infill situation. He concluded that this request was not harmful to the health or safety, did not encroach any further than the adjoining properties and is an appropriate design for the neighborhood. He presented an elevation of the proposed property.

Edward Haelterman, 3007 Soldiers Home Road, West Lafayette, IN, stated that he was concerned because the parking was very limited and there are already parking problems with the adjoining property. He said that the widening of Soldiers Home Road was inevitable because of all the new construction and would be a major undertaking that would cause even more problems. He mentioned that there is also a fear that land would be taken from them.

Matthew Follman, 206 Shelby Court, West Lafayette, IN, stated that his property is about 25' away from the western edge of this property. He said that he had a concern about construction in general at this location. He explained that they will have a newborn baby in the house within the next month and he was concerned for noise and dust pollution. He said that drainage was also an issue because this property was higher than theirs. He asked if the sewer and utility issues have been resolved. He asked if they planned to remove the trees because that would cause an increased exposure to traffic noise. He reiterated the concern of traffic and public safety. He asked if an environmental study had been done because there is a high amount of limestone in the area and radon testing should be done.

Barry Ruben stated that most of the issues raised do not address the issue of variance. He said that he shared the same concerns in terms of impact of construction. He pointed out that once a determination of variance has been made, all of the other issues such as drainage and utilities would have to be approved by the respective government entities. He mentioned that whatever is built on this site would have some kind of impact on the adjoining areas. He stated that if neighbors are irresponsible and park illegally, that does not address the issue of variance.

Ralph Webb asked if the whole proposal could be moved 10 feet back.

Barry Ruben stated that they tried several variations within the building area. He said that if they moved it back, then that would be a rear setback variance.

Mark Hermodson stated that they are right up against the rear yard setback now. He said that there is area to the south that is buildable.

Barry Ruben stated that it was narrowing of the envelope toward the south that becomes a challenge.

Steve Clevenger asked for clarification that averaging was only allowed on local streets.

Sallie Fahey stated that was correct.

The Board voted by ballot to 1 grant – 5 to deny thus denying **BZA-1662—MADAM NEW YORK, LLC.**

**Yes votes**

Gary Schroeder

**No votes**

Mark Hermodson

Steve Clevenger

Edward Weast

Ralph Webb

Edward Butz

**3. BZA-1663—LEROY B. SCHWARZ AND RONA SCHWARZ TRUST:**

Petitioners are seeking a variance to allow a 22' setback instead of the required 25' from the right-of-way of Carrollton Blvd. to construct an addition to a single-family home on property located at 808 Carrollton Blvd., in the City of West Lafayette, Wabash 18(NW)23-4. (UZO 4-2-2)

Ralph Webb moved to hear and vote on the above-described request. Edward Butz seconded the motion.

Krista Trout presented slides of the zoning map, 2 aerials, site plan and 5 photos. She read the staff report with recommendation of denial. She read the following letters into the record:

C. Scott Snyder, West Lafayette City Engineer, informational documentation.

Nancy Morlan, 811 Carrollton Boulevard, West Lafayette, IN, in favor.

Jeffery and Rhona Schwab, 1601 Woodland, West Lafayette, IN, in favor.

Stephen and Kelly, Curtis, 820 Carrollton Boulevard, West Lafayette, IN, in favor.

David and Andrea Williams, 824 Carrollton Boulevard, West Lafayette, IN, in favor.

Joseph and Eileen Carl, 904 Carrollton Boulevard, West Lafayette, IN, in favor.

Kathryn Hughes 908 Carrollton Boulevard, West Lafayette, IN, in favor.

Robert and Joan Cassel, 916 Carrollton Boulevard, West Lafayette, IN, in favor.

Hee Suk McAlister, 920 Carrollton Boulevard, West Lafayette, IN, in favor.

William and Louella Fuller, 924 Carrollton Boulevard, West Lafayette, IN, in favor.

Rebecca and Roger Unland, 1600 Northwestern Avenue, West Lafayette, IN, in favor.

Joseph T. Bumbleburg, PO Box 1535, Lafayette, IN stated that this house was built in the 1970's and designed by architect Dean Upshaw. He mentioned that the same architect would be designing the remodel. He informed the Board that in 1995 this house and garden were featured in the Journal and Courier and in 1994 was part of the Tippecanoe County Historical Society Garden Tour. He pointed out that one of the letters in support of this petition was from Nancy Morlan, who is in the real estate appraisal business. He said that every person in this subdivision wrote a letter in support of this petition. He stated that it is not practical to put the addition on the back of the house because it is the existing living room, in the front that needs expansion. He explained that the petitioner received a promotion that will require effective entertainment in his home. He mentioned that the back of the house is on a slab, which makes it much more difficult to renovate. He pointed out that the permit was granted and the petitioner has made an extra effort to involve the City Engineer. He said that the property to the east actually faces Woodlawn and therefore a setback comparison cannot be made. He stated that the house to the west has its front door on the side of the house, so a setback does not make sense there either. He mentioned that there is no health or safety impact with this request.

Ralph Webb asked if there is a picture of what the proposed front will look like.

Joseph T. Bumbleburg presented a blueprint of the design and pointed out that it is consistent with the design of the house and area.

Ralph Webb asked if the neighbors have seen this blueprint.

Joseph T. Bumbleburg replied affirmatively.

The Board voted by ballot 6 to grant – 0 to deny thus approving **BZA-1663—LEROY B. SCHWARZ AND RONA SCHWARZ TRUST.**

**4. BZA-1664—WILLIAM & KATHLEEN POTTS:** Petitioners are seeking a variance to allow a 24' setback instead of the required 60' from the right-of-way of US 52 to construct a second story addition to a single-family home on property located at 7644 US 52 W, Sheffield 33(SE)22-3

Ralph Webb moved to hear and vote on the above-described request. Edward Butz seconded the motion.

Krista Trout presented slides of the zoning map, 2 aerials, flood plain map, well and septic map, 2 sketch plans and 13 photos. She read the staff report with recommendation of denial. She read the following letters into the record:

David Stevenson, 7748 US 52 S., Lafayette, IN, in favor.

John and Jane Smith, 7754 US 52 S., Lafayette, IN, in favor.

Robert and Vera Skinner, 7614 E 800 S., Lafayette, IN, in favor.

Brooke Hammond, Regulatory Engineer, INDOT, PO Box 667, Crawfordsville, IN, stating no objections.

Joseph T. Bumbleburg stated that the petitioners have owned this property for many years and are now able to upgrade and bring the house into the modern day. He said that the house dates back to the 1950's and predates all zoning rules. He presented pictures of the house before construction was started. He mentioned all the problems that this kind of lot has. He stated that the petitioner obtained a building permit to fill in the land and an electrical permit. He explained that the petitioner thought that the walls remained retaining walls until the roof was put on. He stated that the petitioner was trying to comply and do everything right, but did not understand the definition of a retaining wall. He pointed out that this petition holds no harm to anyone and the neighbors are in support of it. He mentioned that INDOT does not have any objection and this road would be difficult to widen anyway. He said that this is an opportunity to compact this area properly and use the retaining walls as walls for the house. He stated that the rules of the ordinance do not require a harsh reaction by the board. He reiterated the unusual shape of the property and asked for approval.

Ralph Webb asked the staff if the issue would have been raised if the window holes were not in the wall.

Krista Trout explained the thought process used by the staff to come to this conclusion.

Ralph Webb asked for confirmation that as of right now, nothing illegal has been done.

Krista Trout pointed out that the retaining walls were larger than the permit allowed for.

Ralph Webb asked that if the walls were shortened could everything be left as is.

Sallie Fahey stated that Ron Highland also visited the site and his determination was that more than just retaining walls had been built.

Ralph Webb stated that the only reason we know that is by the petitioner's own admission and nothing illegal has been done, beyond the height issue.

Krista Trout reiterated that Ron Highland determined that more was done than the permit allowed.

Mark Hermodson questioned whether the ordinance allowed an expansion of this use.

Jay Seeger stated that this was a non-conforming use and expansion was not allowed.

Mark Hermodson asked if the Board of Zoning Appeals has the power to grant a variance to expand a non-conforming use.

Sallie Fahey stated that this was a conforming use but a non-conforming structure.

Mark Hermodson asked if this Board had the power to grant an expansion of a non-conforming structure.

Krista Trout replied affirmatively.

Joseph T. Bumbleburg stated that if the definition of a retaining wall were researched the answer would probably be subjective.

Gary Schroeder questioned the reason behind the staff's statement that they would normally support this.

Krista Trout stated that if the work had not been done in violation or had not been done at all, then it could have been supported.

Gary Schroeder asked if it would have been supported if it were done in the correct order.

Sallie Fahey stated that once things were done out of order, there was no longer a hardship.

Mark Hermodson stated that he would support this petition but was upset to see what amounts to subterfuge. He mentioned that this is rebuilding the house from the outside in. He pointed out that if this was properly filed, there would be no problem and would have had staff's support. He stressed that this was not the way things should be done.

Joseph T. Bumbleburg stated that Mark Hermodson's assertion that something was done out of malice was incorrect. He stated that Mr. Hermodson was making a judgment that the facts of the case did not support. He said that the fault of this case lies within the system and bad definitions. He pointed out that the Building Commission Office inspected this. He stressed that there has never been subterfuge.

Mark Hermodson pointed out the intended roof and extension.

Joseph T. Bumbleburg stated that the Building Commission Office was told of the intent.

Sallie Fahey stated that the new walls and new roof was not revealed to the staff until Monday.

The Board voted by ballot 6 to grant – 0 to deny thus approving **BZA-1664—WILLIAM & KATHLEEN POTTS.**

Mark Hermodson stated that unless any member has an objection the chair will order the findings of each member casting a vote for the majority decision of the Board to be the collective findings of the Board in support of the decision of the Board. Hearing none, it is so ordered.

#### **IV. ADMINISTRATIVE MATTERS** None

#### **V. ADJOURNMENT**

Ralph Webb moved for adjournment. Edward Butz seconded and the motion carried by voice vote.

The meeting adjourned at 7:45 PM

Respectfully submitted,



Michelle D'Andrea  
Recording Secretary

Reviewed by,



Sallie Dell Fahey  
Executive Director